

REMARKS

This paper responds to the Office Communication mailed on June 18, 2009. In the Office Communication, the Examiner stated that all claims have been amended drawn to a non-elected species figure 3, these amended claims are not readable on the originally elected species 1, 2, 8, and 9. The Examiner stated that the newly presented claims in Amendment filed March 17, 2009 should be withdrawn from consideration as being directed to a non-elected species, since applicant has received an action on the merits for the originally elected species. The Applicant has provided a new amended claim 1 drawn to originally elected species 1, 2, 8, and 9. Support for the amendment to Claim 1 can found throughout the specification, including, but not limited to the following: ¶ [0024]-[0025] and Figs. 1 and 2. Support for the amendment to Claim 2 can found in ¶ [0024], amendment to Claim 3 can be found in ¶ [0027], new claim 26 in ¶ [0025], new claim 27 in ¶¶ [0007], [0033]-[0034], [0037]-[0038], and new claim 28 in ¶¶ [0028]. Claims 27 and 28 are presented as generic claims. As such, the Applicant submits that amended claim 1 does not require withdrawal or cancellation, claims 26-27 are generic claims, and the pending claims should be examined accordingly.

In the Office Action dated February 25, 2008, the election was treated as an election without traverse, and the pending claims were rejected on a number of bases. Applicants disagree with the treatment of the election and the art-based rejection of the claims. Applicants respectfully request reconsideration of the treatment of the election and the art-based rejection. Favorable action is solicited.

Applicants thank the Examiner for acknowledgement of election of the species of Figures 1, 2, 8 and 9. Applicants respectfully disagree with treatment of the election as an election without traverse and respectfully request reconsideration of this treatment. Applicants respectfully submit that, in the Response to Restriction Requirement submitted on December 15, 2007, Applicants distinctly and specifically pointed out errors in the restriction requirement. Applicants objected to the restriction requirement, and pointed out that ALL of the claims are classified in the SAME CLASS, viz. class 604, subclass 103.03. As all of the identified Species are in the same class and subclass, there is no burden on the Examiner to examine all of the

Species together. As there is no serious burden on the Examiner if restriction is not required, MPEP §803 states that the criteria for a proper restriction requirement do not exist. Given that Applicants made these arguments in the Response to Restriction Requirement, it is not proper to treat the election as an election without traverse. Applicants respectfully request the Examiner to treat the election as being made **with traverse**. Favorable action is solicited.

Applicants have amended the pending claims to more positively recite the metal balloon embodiment of the present invention. The Applicant has also presented generic claims.

Claims 1-7, 13 and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,733,513. This application and the '513 patent are commonly owned. Applicant submits that the claims as amended traverse the Examiner's provisional non-statutory obviousness-type double patenting rejection. However, to the extent that the Examiner may maintain this provisional rejection, Applicants reserve the right to file a terminal disclaimer upon indication of allowable subject matter in the present case.

Claims 1-7, 13 and 15 are rejected under 35 USC § 102(b) as being anticipated by Euteneur. Applicants respectfully submit that this rejection has been overcome by the amendment to claim 1 - the sole independent claim. Euteneur does not teach or suggest the amendment to claim 1 - the sole independent claim. Euteneur does not teach or suggest the "balloon comprising a inner surface, an outer surface, and a wall thickness therebetween, wherein the wall thickness consists of at least one metal". Thus, claim 1, which includes, *inter alia*, the limitation that one of the balloons is made consisting of at least one metal and that there is a dual balloon configuration and drug-eluting openings, none of which is found in the cited reference, is allowable. As the other claims depend, either directly or indirectly from independent claim 1, those dependent claims are allowable as well.

Conclusion

Any amendments made during prosecution of this application are intended solely to expedite prosecution of the application and are not to be interpreted as an acknowledgement of the validity of any rejection raised in prosecution, nor as an acknowledgement that any citation

made against the application is material to the patentability of the application prior to amendment.

No additional fees are believed due with this Response, however, the U.S. Patent Office is authorized to charge any underpayment of fees or credit any overpayment of fees to Deposit Account No. 18-2000 of which the undersigned is an authorized signatory.

Should the Examiner find any outstanding matters that are resolvable by telephone interview, the Examiner is invited to telephone the undersigned to discuss the same.

Respectfully submitted,



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